

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 180

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

AN ACT

RELATING TO ETHICS; AMENDING AND ENACTING SECTIONS OF THE  
GOVERNMENTAL CONDUCT ACT; PROHIBITING CERTAIN ACTS BY PUBLIC  
OFFICERS AND EMPLOYEES; PROHIBITING CERTAIN CONTRACTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-16-2 NMSA 1978 (being Laws 1967,  
Chapter 306, Section 2, as amended) is amended to read:

"10-16-2. DEFINITIONS.--As used in the Governmental  
Conduct Act:

A. "business" means a corporation, partnership,  
sole proprietorship, firm, organization or individual carrying  
on a business;

B. "confidential information" means information  
that by law or practice is not available to the public;

C. "employment" means rendering of services for

1 compensation in the form of salary as an employee;

2 D. "family" means an individual's spouse, parents,  
3 children or siblings, by consanguinity or affinity;

4 ~~[D.]~~ E. "financial interest" means an interest held  
5 by an individual [his spouse or dependent minor children] or  
6 the individual's family that is:

7 (1) an ownership interest in business; or

8 (2) any employment or prospective employment  
9 for which negotiations have already begun;

10 ~~[E.]~~ F. "official act" means an official decision,  
11 recommendation, approval, disapproval or other action that  
12 involves the use of discretionary authority;

13 ~~[F. "person" means an individual or entity;]~~

14 G. "public officer or employee" means any person  
15 who has been elected to, appointed to or hired for any state  
16 office and who receives compensation in the form of salary or  
17 is eligible for per diem or mileage, but excludes legislators  
18 and judges;

19 H. "standards" means the conduct required by the  
20 Governmental Conduct Act; and

21 I. "substantial interest" means an ownership  
22 interest that is greater than twenty percent."

23 Section 2. Section 10-16-4 NMSA 1978 (being Laws 1967,  
24 Chapter 306, Section 4, as amended) is amended to read:

25 "10-16-4. OFFICIAL ACT FOR PERSONAL FINANCIAL INTEREST

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1 PROHIBITED--DISQUALIFICATION FROM OFFICIAL ACT--PROVIDING A  
2 PENALTY.--

3 A. It is unlawful for a public officer or employee  
4 to take an official act for the primary purpose of directly  
5 enhancing [~~his own~~] the public officer's or employee's  
6 financial interest or financial position. Any person who  
7 knowingly and willfully violates the provisions of this  
8 subsection is guilty of a fourth degree felony and shall be  
9 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
10 1978.

11 B. A public officer or employee shall [~~disqualify~~  
12 ~~himself~~] be disqualified from engaging in any official act  
13 directly affecting [~~his~~] the public officer's or employee's  
14 financial interest.

15 [~~C. If the public interest so requires, the~~  
16 ~~governor may make an exception to Subsection B of this section~~  
17 ~~for a public officer or employee by expressing the exception~~  
18 ~~and the reasons for it in writing. The exception is effective~~  
19 ~~when the public officer or employee files this writing with the~~  
20 ~~secretary of state.]"~~

21 Section 3. Section 10-16-6 NMSA 1978 (being Laws 1967,  
22 Chapter 306, Section 6, as amended) is amended to read:

23 "10-16-6. CONFIDENTIAL INFORMATION.--No legislator,  
24 public officer or employee shall use or disclose confidential  
25 information acquired by virtue of [~~his~~] the legislator's,

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1 public officer's or employee's state employment or office for  
2 ~~[his]~~ the legislator's, public officer's or employee's or  
3 another's private gain."

4 Section 4. Section 10-16-7 NMSA 1978 (being Laws 1967,  
5 Chapter 306, Section 7, as amended) is amended to read:

6 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR  
7 EMPLOYEES.--A state agency shall not enter into ~~[any]~~ a  
8 contract for services, construction or items of tangible  
9 personal property with a public officer or employee of the  
10 state, with the family of the public officer or employee or  
11 with a business in which the public officer or employee or the  
12 family of the public officer or employee has a substantial  
13 interest unless the public officer or employee has disclosed  
14 ~~[his]~~ the public officer's or employee's substantial interest  
15 and unless the contract is awarded pursuant to the Procurement  
16 Code, except that the potential contractor shall not be  
17 eligible for a sole source or small purchase contract; provided  
18 that this section does not apply to a contract of official  
19 employment with the state or to contracts made pursuant to the  
20 provisions of the University Research Park Act. A person  
21 negotiating or executing a contract on behalf of a state agency  
22 shall exercise due diligence to ensure compliance with the  
23 provisions of this section."

24 Section 5. Section 10-16-9 NMSA 1978 (being Laws 1967,  
25 Chapter 306, Section 9, as amended) is amended to read:

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underscored material = new  
[bracketed material] = delete

1 "10-16-9. CONTRACTS INVOLVING LEGISLATORS--REPRESENTATION  
2 BEFORE STATE AGENCIES.--

3 A. A state agency shall not enter into [~~any~~  
4 ~~procurement~~] a contract for services, construction or items of  
5 tangible personal property with a legislator, the legislator's  
6 family or with a business in which the legislator or the  
7 legislator's family has a substantial interest unless the  
8 legislator has disclosed [~~his~~] the legislator's substantial  
9 interest and unless the contract is awarded in accordance with  
10 the provisions of the Procurement Code, except the potential  
11 contractor shall not be eligible for a sole source or small  
12 purchase contract. A person negotiating or executing a  
13 contract on behalf of a state agency shall exercise due  
14 diligence to ensure compliance with the provisions of this  
15 subsection.

16 B. A legislator shall not appear for, represent or  
17 assist another person in [~~any~~] a matter before a state agency,  
18 unless without compensation or for the benefit of a  
19 constituent, except for legislators who are attorneys or other  
20 professional persons engaged in the conduct of their  
21 professions and, in those instances, the legislator shall  
22 refrain from references to [~~his~~] the legislator's legislative  
23 capacity except as to matters of scheduling, from  
24 communications on legislative stationery and from threats or  
25 implications relating to legislative actions."

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1           Section 6. Section 10-16-13 NMSA 1978 (being Laws 1967,  
2 Chapter 306, Section 13) is amended to read:

3           "10-16-13. PROHIBITED BIDDING.--No state agency shall  
4 accept ~~[any]~~ a bid or proposal from a person who directly or  
5 indirectly participated in the preparation of specifications,  
6 qualifications or evaluation criteria on which the competitive  
7 bidding or proposal was ~~[held]~~ based. A person accepting a bid  
8 or proposal on behalf of a state agency shall exercise due  
9 diligence to ensure compliance with this section."

10           Section 7. A new section of the Governmental Conduct Act  
11 is enacted to read:

12           "[NEW MATERIAL] CERTAIN BUSINESS SALES TO STATE AGENCIES  
13 AND THEIR EMPLOYEES PROHIBITED.--

14           A. A public officer or employee shall not sell or  
15 be a party to a transaction to sell goods, services,  
16 construction or items of tangible personal property directly or  
17 indirectly, through the public officer's or employee's family  
18 or a business in which the public officer or employee has a  
19 substantial interest, to the state agency with which the public  
20 officer or employee is employed. It is not a violation of this  
21 subsection if the public officer or employee employed by the  
22 state agency in good faith is not aware of:

23                   (1) the substantial interest held by the  
24 public officer or employee or the public officer's or  
25 employee's family in the business that is selling or engaged in

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1 a transaction to sell goods, services, construction or items of  
2 tangible personal property to the state agency by which the  
3 public officer or employee is employed; or

4 (2) the sale of or the transaction to sell  
5 goods, services, construction or items of tangible personal  
6 property by the public officer's or employee's family or by a  
7 business in which the public officer or employee or the public  
8 officer's or employee's family has a substantial interest to  
9 the state agency by which the public officer or employee is  
10 employed.

11 B. A public officer or employee shall not sell,  
12 offer to sell, coerce the sale of or be a party to a  
13 transaction to sell goods, services, construction or items of  
14 tangible personal property, directly or indirectly through the  
15 public officer's or employee's family or a business in which  
16 the public officer or employee has a substantial interest, to  
17 an employee supervised by the public officer or employee. A  
18 public officer or employee shall not receive a commission or  
19 shall not profit from the sale or a transaction to sell goods,  
20 services, construction or items of tangible personal property  
21 to an employee supervised by the public officer or employee.  
22 The provisions of this subsection shall not apply if the  
23 supervised employee initiates the sale. It is not a violation  
24 of this subsection if a public officer or employee, in good  
25 faith, is not aware that the employee to whom the goods,

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1 services, construction or items of tangible personal property  
2 are being sold is under the supervision of the public officer  
3 or employee."

4 Section 8. A new section of the Governmental Conduct Act  
5 is enacted to read:

6 "[NEW MATERIAL] PROHIBITED POLITICAL ACTIVITIES.--Public  
7 officers and employees are prohibited from:

8 A. directly or indirectly coercing or attempting to  
9 coerce a state officer or employee to pay, lend or contribute  
10 anything of value to a party, committee, organization, agency  
11 or person for a political purpose;

12 B. threatening to deny a promotion or pay increase  
13 to an employee who does or does not vote for certain  
14 candidates, requiring an employee to contribute a percentage of  
15 the employee's pay to a political fund, influencing a  
16 subordinate employee to purchase a ticket to a political  
17 fundraising dinner or similar event, advising an employee to  
18 take part in political activity or similar activities; or

19 C. violating the officer's or employee's duty to  
20 not use state property, or allow its use, for other than  
21 authorized purposes."

22 Section 9. A new section of the Governmental Conduct Act  
23 is enacted to read:

24 "[NEW MATERIAL] DISCLOSURE OF OUTSIDE EMPLOYMENT.--A  
25 public officer or employee shall disclose in writing to the

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1 supervisor of the officer or employee, or in the event there is  
2 no supervisor, to the secretary of state, all employment  
3 engaged in by the officer or employee other than the employment  
4 with the state."

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